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State of Utah v. Jack Donaldson : Brief of Appellant

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Recommended Citation

Brief of Appellant, *State v. Donaldson*, No. 9905 (Utah Supreme Court, 1963).
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IN THE SUPREME COURT

of the

STATE OF UTAH

STATE OF UTAH.

Respondent

Case No. 18252

VS.

JACK DONALDSON

Appellant.

BRIEF OF APPELLANT

STATEMENT OF THE CASE

Appellant was charged by information filed on December 27, 1962, with the charge of issuing a check against insufficient funds. He was tried on March 21, 1963, in the District for Salt Lake County of Salt

Lake City, Utah, Judge Snow, presiding without jury.

DISPOSITION MADE BY THE LOWER COURT

Appellant was found guilty and sentenced to one year imprisonment in the Salt Lake County Jail, which he is presently serving.

RELIEF SOUGHT ON APPEAL

Reversal of Trial Court's Judgment.

STATEMENT OF FACTS

Appellant purchased gas from Cash Saver Service Station, paying with Exhibit 8-1 which purported to be a bank check. When the State Attempted to introduce Exhibit 8-1, Appellant objected on the ground that it was not a check, there being no named payee. The Court, after argument, overruled Appellant's objection and the State introduced the exhibit.

STATEMENT OF POINTS

POINT I

THE TRIAL COURT ERRED IN ALLOWING
INTO EVIDENCE EXHIBIT S-1.

ARGUMENT OF THE POINTS

points. POINT I is as follows:

The trial court erred in allowing
into evidence Exhibit S-1 which purported
to be a bank check. Said item is not a
check because it does not have written there-
on the name of a payee. People v. Nichols
(Illinois) 63 NW 2d 759; State v. Ivey
(North Carolina) 248 NC 316, 103 SE 2d 398.
Both Courts which have decided this issue
in a criminal case have declared that with-
out there being a named payee, the item
cannot be a check. In State v. Ivey NC
103 SE 2d 398, 248 NC 316 the Court stated:

"An instrument is not a

check if it does not appear
from the face of the paper
to whom it is payable."

State v. Ivey, supra, was an insufficient funds case which, in all factual respects, is exactly in point. People v. Nichols, supra, is even a stronger worded opinion. This case was a forgery action and the Defendant pled guilty. The Illinois Supreme Court held that Defendant's guilty plea could not stand saying that the Trial Court did not have jurisdiction.

"To give a court jurisdiction
of the subject matter it is
essential that the accused be
charged with a crime. . . .

(this) cannot be waived and
a plea of guilty cannot stand."

In the present case the instrument was

not made out to a person or his order. Neither was it made out to bearer. Hence, the instrument was not a check. In this jurisdiction a check is a bill of exchange. Utah Code Ann, 44-3-2 (1953). A bill of exchange is defined at 44-2-1, Utah Code Ann, 1953, as: ~~how~~

" . . . an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or bearer.

(Emphasis added).

When payable to order " . . . the payee must be named or otherwise indicated therein

with reasonable certainty." 44-1-9, Utah Code Ann. (1953). For an instrument to be payable to bearer one of five requirements must be met, 44-1-10, Utah Code Ann. 1953.

- " . . . 1. When it is expressed to be so payable; or,
2. When it is payable to a person named therein or to bearer; or,
3. When it is payable to the order of a fictitious or non-existing person, or to a living person not intended or entitled to have any interest in it and such fact was known to the person making it so payable, or was known to his employee or other agent who acting in the course of his

employment supplies or causes
to be inserted the name of
such payee; or, ~~and~~

4. When the name of the payee
does not purport to be the
name of any person; or,

5. When the only or last
endorsement is an endorsement
in blank."

Perusal of Exhibit S-1, the purported
check, clearly indicates the instrument to
be order paper. Since, the last endorsement
is not in blank, the instrument cannot be
construed as bearer paper. Therefore, the
instrument fails to be a check for want of
a payee.

CONCLUSION

The instrument in issue in the instant
case was not a check. Therefore, there was

no crime and the Court was without jurisdiction to try the Appellant and find him guilty of issuing a check against insufficient funds. Appellant submits that the conviction cannot stand.